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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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TRACI TAYLOR and STEVEN D.  
TAYLOR,

Plaintiffs,

v.

GREG B. COOK, DPM; TRAVIS  
SAUTTER, DPM; COOK & SAUTTER  
FOOT & ANKLE, LLC fka COOK FOOT  
& ANKLE SPECIALISTS, LLC AND  
COOK FOOT AND ANKLE CENTER,  
LLC; W. BRYCE COOK, DPM; SPRING  
CREEK SURGICAL CENTER, LLC,

Defendants.

MEMORANDUM DECISION AND  
ORDER GRANTING IN PART  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT

Case No. 1:20-CV-17 TS

District Judge Ted Stewart

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This matter is before the Court on a Motion for Summary Judgment filed by Defendants Travis Sautter, DPM, W. Bryce Cook, DPM, and Cook Foot & Ankle Specialists, LLC (collectively, "Defendants"). Plaintiffs have failed to respond to the Motion and the time for doing so has expired.<sup>1</sup> For the reasons discussed below, the Court will grant the Motion in part.

#### I. BACKGROUND

Plaintiffs bring this action based on alleged negligent medical treatment Traci Taylor received from Greg B. Cook, DPM at Cook Foot & Ankle Specialists. Plaintiffs assert claims of negligence, failure to obtain informed consent, and loss of consortium. Defendants seek summary judgment on all claims against them.

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<sup>1</sup> DUCivR 7-1(b)(3)(A).

## II. SUMMARY JUDGMENT STANDARD

Generally, summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”<sup>2</sup> In considering whether a genuine dispute of material fact exists, the Court determines whether a reasonable jury could return a verdict for the nonmoving party in the face of all the evidence presented.<sup>3</sup> The Court is required to construe all facts and make all reasonable inferences in the light most favorable to the nonmoving party.<sup>4</sup>

This standard is somewhat modified in an unopposed motion for summary judgment. It is improper for the Court to grant summary judgment simply because it is unopposed.<sup>5</sup> Instead, the Court must “examin[e] the moving party’s submission to determine if it has met its initial burden of demonstrating that no material issues of fact remain for trial and the moving party is entitled to judgment as a matter of law.”<sup>6</sup> In doing so, the Court may consider any properly stated facts as “undisputed for purposes of the motion.”<sup>7</sup> Further, facts deemed admitted through a failure to respond to a request for admission may support a motion for summary judgment.<sup>8</sup>

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<sup>2</sup> FED. R. CIV. P. 56(a).

<sup>3</sup> See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Clifton v. Craig*, 924 F.2d 182, 183 (10th Cir. 1991).

<sup>4</sup> See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Wright v. Sw. Bell Tel. Co.*, 925 F.2d 1288, 1292 (10th Cir. 1991).

<sup>5</sup> See *Reed v. Bennett*, 312 F.3d 1190, 1194–95 (10th Cir. 2002); *United States v. Dawes*, 344 F. Supp. 2d 715, 718 (D. Kan. 2004); DUCivR 7-1(d); DUCivR 56-1(f).

<sup>6</sup> *Reed*, 312 F.3d at 1195.

<sup>7</sup> See FED. R. CIV. P. 56(e)(2).

<sup>8</sup> FED. R. CIV. P. 56(c)(1)(A); *H. B. Zachry Co. v. O’Brien*, 378 F.2d 423, 425 (10th Cir. 1967); *Moosman v. Joseph P. Blitz, Inc.*, 358 F.2d 686, 688 (2d Cir. 1966).

### III. DISCUSSION

Plaintiffs must establish the following elements to sustain a prima facie case of medical malpractice: “(1) the standard of care by which the doctor’s conduct is to be measured, (2) breach of that standard by the doctor, and (3) injury proximately caused by the doctor’s negligence.”<sup>9</sup> “A plaintiff’s failure to present evidence that, if believed by the trier of fact, would establish any one of the three prongs of the prima facie case justifies a grant of summary judgment to the defendant.”<sup>10</sup> Generally, “the plaintiff must provide expert testimony to establish: 1) the standard of care; 2) defendant’s failure to comply with that standard; and 3) that defendant caused plaintiff’s injuries.”<sup>11</sup> Expert testimony is also generally required to establish a claim for failing to obtain informed consent.<sup>12</sup>

Plaintiffs have disclosed an expert who is anticipated to testify that another Defendant, Greg B. Cook, breached the applicable standard of care.<sup>13</sup> However, Plaintiffs have not disclosed an expert to offer testimony that the moving Defendants breached the standard of care.<sup>14</sup> Therefore, Plaintiffs’ claims for negligence and failure to obtain informed consent fail as to these Defendants. However, to the extent Plaintiffs assert a claim against Cook Foot & Ankle Specialists under a theory of respondeat superior,<sup>15</sup> Defendants provide no basis for dismissal of

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<sup>9</sup> *Chadwick v. Nielsen*, 763 P.2d 817, 821 (Utah Ct. App. 1988).

<sup>10</sup> *Dikeou v. Osborn*, 881 P.2d 943, 946 (Utah Ct. App. 1994).

<sup>11</sup> *Hoopiiaina v. Intermountain Health Care*, 740 P.2d 270, 271 (Utah Ct. App. 1987) (internal citations omitted).

<sup>12</sup> *Goddard v. Hickman*, 685 P.2d 530, 533 (Utah 1984); *Chadwick*, 763 P.2d at 821 n.4.

<sup>13</sup> Docket No. 25 Ex. 3.

<sup>14</sup> *See id.*

<sup>15</sup> Docket No. 2 ¶ 61.

that claim and it will remain.<sup>16</sup> Further, since Plaintiff Steven B. Taylor's loss of consortium claim is dependent on Plaintiffs' other claims, it too is subject to dismissal as against these Defendants.<sup>17</sup>


#### IV. CONCLUSION

It is therefore

ORDERED that Defendants' Motion for Summary Judgment (Docket No. 25) is GRANTED IN PART as set forth above.

DATED this 12th day of April, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", is written over a horizontal line.

Ted Stewart  
United States District Judge

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<sup>16</sup> *Christensen v. Swenson*, 874 P.2d 125, 127 (Utah 1994) ("Under the doctrine of respondeat superior, employers are vicariously liable for torts committed by employees while acting within the scope of their employment.").

<sup>17</sup> See Utah Code Ann. § 30-2-11(5); *Fox v. Brigham Young Univ.*, 2007 UT App 406 ¶ 24, 176 P.3d 446.